Dato' Pardip Kumar Kukreja & Anor v Vell Paari a/l Samy Vellu

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–540–03 OF 2013
UMI KALTHUM, VERNON ONG AND ZAMANI RAHIM JJCA
24 AUGUST 2015

Companies and Corporations — Lifting of corporate veil — Piercing of corporate veil — Parties entered into tenancy agreement — Respondent alleged breach of tenancy agreement by appellants — First appellant was director of second appellant — Whether first appellant liable for alleged breach of tenancy agreement by second appellant

Contract — Tenancy agreement — Breach — Parties entered into tenancy agreement — Respondent alleged breach of tenancy agreement by appellants — Whether first appellant liable for alleged breach of tenancy agreement by second appellant — Whether respondent proven allegation in respect of renovation and refurbishment works and conversion — Whether award of damages sustainable

This was an appeal against the decision of the High Court in allowing the respondent's claim on liability for breach of a tenancy agreement, for the tort of conversion and for damages to be assessed before the registrar. The respondent and the second appellant had entered into a tenancy agreement whereby the second appellant agreed at its own costs to carry out all alterations on a hotel known as Hotel Alamanda ('the hotel') owned by the respondent. At the end of the tenancy, the first appellant delivered vacant possession of the hotel to the respondent. The appellants set-off the sum of RM55,000 from the rentals for the costs of replacing or repairing the centralised air-conditioning unit in the hotel which was faulty. However, instead of replacing or repairing the centralised air-conditioning unit, the first appellant installed individual split-unit air conditioners in each of the rooms. The issues for determination were: (a) whether first appellant could be held liable for any alleged breaches of tenancy agreement by the second appellant; (b) whether the respondent had proven the facts which he asserted underlies the appellants' liability in respect of the renovation and refurbishment works and conversion; and (c) whether the award of damages was sustainable.

Held, allowing the appeal and setting aside the order of the High Court with costs of RM50,000:

(1) It was not the respondent's case that special circumstances existed to indicate that the second appellant was a mere façade or front for the first appellant. Nor was a case of actual or equitable fraud raised on the pleadings. Accordingly, it was of no avail to the respondent to argue that this was a case for piercing the corporate veil. There was no evidential basis on the record to support that plea (see para 21).

(2) In the present case, it was the respondent who must establish his case. If he fails to do so, it will not do for the respondent to say that the appellants have not established their defence. Clause 5(f) was devoid of the necessary details of the renovation and refurbishment works the appellants were supposed to undertake. In this connection, even though the respondent referred to a list which he said contains the details of the renovation and refurbishment works the respondent did not produce the list. The letter dated 14 June 2007 was a self-serving document and the allegations contained therein were also vague and unclear. As such, there was no probative value to be attached to the said letter (see paras 24–25).

(3) The fact that the appellants failed to pay the short-paid rental for the seven year period of the tenancy was not pleaded in the statement of claim, thus, there was no cause of action to found a basis for the respondent's claim for the short-paid rental amounting to RM504,000 (see para 27).

(4) On the totality of the evidence, the court was of the view that the respondent has not established a prima facie case. The learned judge had misdirected herself on the principle of law pertaining to the lifting of the corporate veil and finding the first appellant personally liable under the tenancy agreement (see paras 28–29).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi dalam membenarkan tuntutan responden atas liabiliti bagi pelanggaran perjanjian penyewaan, untuk tort konversi dan bagi ganti rugi untuk ditaksir di hadapan pendaftar. Responden dan perayu kedua telah memasuki ke dalam perjanjian penyewaan di mana perayu kedua bersetuju pada kosnya sendiri untuk menjalankan kesemua pengubahan atas hotel yang dikenali sebagai Hotel Alamanda ('hotel tersebut') yang dimiliki oleh responden. Pada akhir penyewaan, perayu pertama memberikan milikan kosong hotel tersebut kepada responden. Perayu-perayu *set-off* jumlah RM55,000 daripada sewa bagi kos menggantikan atau memperbaiki unit terpusat penyaman udara di dalam hotel tersebut yang mana adalah rosak. Walau bagaimanapun, sepatutnya menggantikan atau memperbaiki unit terpusat penyaman udara tersebut, perayu pertama memasang penyaman udara unit pisah individu dalam setiap bilik. Isu-isu untuk penentuan adalah: (a) sama ada perayu pertama boleh dipertanggungjawabkan bagi apa-apa pelanggaran perjanjian penyewaan oleh

perayu kedua; (b) sama ada responden telah membuktikan fakta yang ditegaskan yang mendasari liabiliti perayu-perayu berkaitan kerja-kerja pengubahsuaian dan membaik pulih dan penukaran; dan (c) sama ada award ganti rugi boleh dipertahankan.

Diputuskan, membenarkan rayuan dan mengenepikan perintah Mahkamah Tinggi dengan kos sebanyak RM50,000:

(1) Ia bukan kes responden bahawa keadaan khas wujud untuk menunjukkan bahawa perayu kedua adalah hanya penyamaran atau orang hadapan perayu pertama. Juga bukan kes fraud sebenar atau saksama yang dibangkitkan atas pliding. Oleh itu, responden tidak dapat untuk berhujah bahawa kes ini adalah untuk menyingkap tabir koporat. Tidak terdapat asas keterangan dalam rekod untuk menyokong pli ini (lihat perenggan 21).

(2) Dalam kes ini, ia adalah responden yang mesti membuktikan kesnya. Jika dia gagal berbuat sedemikian, ia bukan untuk responden untuk menyatakan bahawa perayu-perayu tidak membuktikan pembelaan mereka. Klausa 5(f) tidak mempunyai butir-butir yang perlu mengenai kerja-kerja pengubahsuaian dan membaik pulih yang patut dijalankan oleh perayu-perayu. Dalam hubungan ini, walaupun responden merujuk kepada senarai yang mana dia nyatakan mengandungi butir-butir kerja-kerja pengubahsuaian dan membaik pulih, responden tidak mengemukakan senarai tersebut. Surat bertarikh 14 Jun 2007 adalah dokumen penting diri dan dakwaan yang terdapat di dalamnya juga adalah kabur dan tidak jelas. Dengan itu, tidak terdapat nilai probatif untuk dikepilkan kepada surat tersebut (lihat perenggan 24–25).

(3) Fakta bahawa perayu-perayu gagal untuk membayar sewa bayaran pendek bagi tempoh tujuh tahun penyewaan tidak diplidkan di dalam pernyataan tuntutan, oleh itu, tidak terdapat kausa tindakan untuk menjadi asas bagi tuntutan responden bagi sewa bayaran pendek berjumlah kepada RM504,000 (lihat perenggan 27).

(4) Atas keseluruhan keterangan, mahkamah berpendapat bahawa responden tidak membuktikan kes prima facie. Hakim yang bijaksana telah tersalah arah dirinya atas prinsip undang-undang berkaitan menyingkap tabir korporat dan mendapati perayu pertama secara peribadi bertanggungan di bawah perjanjian penyewaan (lihat perenggan 28–29).]

Notes

For cases on breach of tenancy agreement, see 3(4) *Mallal's Digest* (5th Ed, 2015) paras 7025–7030.

For cases on piercing of corporate veil, see 3(1) *Mallal's Digest* (5th Ed, 2015) paras 525–526.

Cases referred to

Abrath v North Eastern Railway Co [1883] 11 QBD 440, CA (refd)
Aspatra Sdn Bhd & 21 Ors v Bank Bumiputra Malaysia Bhd & Anor [1988] 1 MLJ 97, SC (refd)
CIMB Bank Bhd v Maybank Trustees Bhd and other appeals [2014] 3 MLJ 169, FC (distd)
Law Kam Loy and Anor v Boltex Sdn Bhd and others [2005] MLJU 225; [2005] 3 CLJ 355, CA (refd)
Lembaga Wang Simpanan Pekerja v Adorna RMIT Sdn Bhd & Ors [2003] 4 MLJ 729, HC (refd)
Loo Lee Mee & Anor v Lee Kean Wei & Ors [2013] 3 MLRH 128, HC (refd)
Selvaduray v Chinniah [1939] 1 MLJ 253, CA (folld)
Sunrise Sdn Bhd v First Profile (M) Sdn Bhd [1996] 3 MLJ 533, FC (distd)
Tenaga Nasional Bhd v Irham Niaga Sdn Bhd & Anor [2011] 1 MLJ 752, CA (refd)

Legislation referred to

Companies Act 1965 s 123(4)
Employees Provident Fund Act 1991 s 2
Evidence Act 1950 ss 101(1), 102

Appeal from: Civil Suit No S1(S7)-22–553 of 2008 (High Court, Kuala Lumpur)

Zainur Zakaria (Zainur Zakaria & Co) for the appellant.
Prem Ramachandran (Kumar Partnership) for the respondent.

Vernon Ong JCA:

INTRODUCTION

[1] The first and second defendants' appeal herein relates to the decision of the High Court allowing the plaintiff's claim on liability for breach of a tenancy agreement and for the tort of conversion and for damages to be assessed before the registrar.

[2] In this judgment, the parties shall be referred to as they were in the court below.

THE SALIENT FACTS

[3] The plaintiff is the owner of a hotel known as Hotel Alamanda in Kuala Terengganu.

[4] Pursuant to various meetings between the plaintiff, one Gurcharan Singh, the first defendant and the first defendant's general manager one Sugumaran a/l Rajaram, the parties reached an oral agreement in February 2000 whereby the plaintiff would lease the hotel to the first defendant and/or his company for a monthly rental of RM6,000. The rental was substantially lower than the market rate of RM12,000 to facilitate the first defendant's agreement to renovate and refurbish the hotel and restore and improve the facilities therein at the first defendant's own costs.

[5] Subsequently, on 16 March 2000 the plaintiff and Matri Properties Sdn Bhd ('the second defendant') entered into a tenancy agreement whereby the second defendant agreed at its own costs to carry out all alterations on the hotel according to a schedule known as 'renovation and refurbishment exercise'. A copy of the schedule was forwarded to the plaintiff by the first defendant on 3 March 2000. There are other clauses not relevant to the present appeal, usual in tenancy agreements.

[6] The tenancy came to an end and the first defendant delivered vacant possession of the hotel to the plaintiff on 1 April 2007.

[7] During the subsistence of the tenancy, the defendants proposed that RM55,000 be set-off from the rentals due to the plaintiff for the costs of replacing or repairing the centralised air-conditioning unit in the hotel which was faulty.

[8] The first defendant proceeded to set-off the agreed sum of RM55,000 from the rentals. However, instead of replacing or repairing the centralised air-conditioning unit the first defendant installed individual split-unit air conditioners in each of the rooms.

THE PLAINTIFF'S CLAIM

[9] The plaintiff's claim for damages is predicated on three main breaches:

(a) the first defendant undertook to renovate and refurbish the hotel and restore the hotel and improve the facilities at his own cost;

(b) the defendants failed to keep the interior of the hotel including all fixtures and fitting therein in good and tenantable repair and condition; and

(c) the defendants had caused to be removed and/or converted for the defendants' own use several fittings in the hotel.

THE DEFENDANTS' REPLY

[10] In summary, the defendants' pleaded defence is as follows:

(a) at all material times, the first defendant was acting in his capacity as a director and agent for the second defendant;

(b) the tenancy agreement was entered between the plaintiff and the second defendant and not with the first defendant;

(c) the first defendant did not give any personal undertaking to the plaintiff in his personal capacity to renovate and refurbish the hotel;

(d) the split-unit air conditioners were installed in the hotel by the second defendant with the consent of the plaintiff;

(e) the plaintiff did not complain about the state and condition of the hotel when vacant possession of the hotel was delivered to the plaintiff; and

(f) the defendants deny to having caused to be removed and/or converted for the defendants' own use several fittings in the hotel.

FINDINGS OF THE HIGH COURT

[11] According to the judgment of the learned judge, the plaintiff's claim was allowed on the following grounds:

(a) the defendants were in breach of their obligation to carry out the renovation and refurbishment works in the hotel under cl 5(f) of the tenancy agreement;

(b) the hotel was in a deplorable state and condition when it was delivered to the plaintiff;

(c) the defendants wrongly converted the centralised air-conditioning compressor, three mini-refrigerators and the canopy at the entrance of the hotel;

(d) the defendants failed to pay the monthly rentals due to the plaintiff under the tenancy agreement; and

(e) the first defendant is liable for the breaches as he was the alter ego of the second defendant. There was a privity of contract between the plaintiff and the first defendant.

SUBMISSION OF PARTIES

The defendants' submission

[12] Learned counsel took three main points. The first point was premised on the argument that the first defendant not being a party to the tenancy agreement and cannot be held liable for any alleged breaches of the tenancy agreement by the second defendant. The plaintiff did not plead a claim based either on actual fraud at common law or some inequitable or unconscionable conduct amounting to fraud in equity. Further no evidence was adduced in support thereof. The circumstances allowing for the lifting of the corporate veil was clearly absent. The learned judge erred in lifting the corporate veil to hold the first defendant liable (*Law Kam Loy and Anor v Boltex Sdn Bhd and others* [2005] MLJU 225; [2005] 3 CLJ 355 (CA); *Tenaga Nasional Bhd v Irham Niaga Sdn Bhd & Anor* [2011] 1 MLJ 752; *Aspatra Sdn Bhd & 21 Ors v Bank Bumiputra Malaysia Bhd & Anor* [1988] 1 MLJ 97 (SC) and *Loo Lee Mee & Anor v Lee Kean Wei & Ors* [2013] 3 MLRH 128).

[13] The second point relates to the renovation and refurbishment works which the defendants were supposed to have carried out. In holding the defendants liable for the same, the learned judge relied on a letter dated 14 June 2007; which said letter was written by the plaintiff two months after the tenancy had ended on 1 April 2007. Learned counsel argued that the learned judge failed to take the following factors into account:

(a) the burden of proof was on the plaintiff to prove his claim;

(b) the allegations contained in the said letter were vague, unclear and not specific and could not be accepted as evidence to form the basis of an agreement;

(c) even though the plaintiff's claim was premised on a list of works, the list was not produced; and

(d) the allegations contained in the said letter were rebutted because numerous questions were put to the plaintiff in cross-examination.

[14] Learned counsel also argued that the learned judge erred in law and in fact in holding that the defendants had agreed to undertake the renovation and refurbishment works. First, cl 5(f) of the tenancy agreement did not contain or specify the nature or type of refurbishment and renovation works which the defendants were supposed to undertake. Although acknowledging that the list was not produced, the learned judge went on to conclude that there was an agreement to undertake the said works and the liability of the defendants had been proven. Second, the learned judge failed to consider that refurbishment and renovation works were of a specific nature and such claims must be specifically pleaded and proved, and that the failure to produce the list was fatal. Lastly, the learned judge failed to consider the undisputed fact that for a period of seven years when the defendants were operating the hotel, the

plaintiff never at any time complained that the defendants failed to carry out the alleged refurbishment and renovation works.

[15] In relation to the plaintiff's claim set out in paras 9(ii) and (iii) above, the learned judge failed to consider the evidence of PW4 that even though PW4 conducted a two-day inspection of the hotel building, there was no report of the alleged damage to the hotel. In fact, an inventory which was signed by the plaintiff's representatives at the inspection was produced at the trial (RR(IV)496–501). There was no minutes written on the inventory list to record any damaged or missing items. As such, the plaintiff's claim in conversion of the air-conditioner compressor was also unsubstantiated; in fact the police report on the loss of the air-conditioner was only lodged nine months after the hotel was handed back to the plaintiff.

[16] The third point related to damages. Learned counsel submitted that the plaintiff had sold the hotel to a third party before the trial of action commenced at the High Court. According to the sale and purchase agreement, the hotel was sold on a 'as is where is basis.' Had the fact of the sale and the fact that the cost of the renovation and refurbishment would be borne by the purchaser, had been made known to the learned judge, the learned judge would not have awarded the damages claimed by the plaintiff. As such, the award of damages was unsustainable and ought to be set aside.

The plaintiff's submission in reply

[17] Learned counsel argued that even though the list was not produced, the defendants were obliged to undertake the renovation and refurbishment works under cl 5(f) of the tenancy agreement.

[18] The defendants handed back the hotel to the plaintiff in a deplorable state. This fact is supported by the evidence of PW5 who was the defendant's agent and general manager of the hotel during the period of the tenancy. Further, the photographs taken by PW4 were a true reflection of the state of the hotel in 2007.

[19] Learned counsel also argued that the police report was made on 24 December 2007 after the plaintiff discovered that the defendants had removed the air conditioner compressor, three refrigerators and the entrance canopy from the hotel.

[20] The first defendant is liable under the tenancy agreement because the second defendant company is the first defendant's family company. The first defendant and his wife are the only directors and shareholders of the second defendant company. Learned counsel also argued that it was for the first

defendant to disprove the fact that he made all decisions concerning the management, finance and employment of the company. The plaintiff had adduced sufficient evidence indicating that the second defendant company was a mere façade to perpetrate the acts of conversion and breaching the terms of the tenancy agreement. As such there was sufficient foundation to support the plea of lifting the corporate veil. Where the doctrine of separate entities is being used to enable persons to evade their contractual obligations or duties, the court would disregard the doctrine of separate entities (*Sunrise Sdn Bhd v First Profile (M) Sdn Bhd* [1996] 3 MLJ 533 (FC) and *CIMB Bank Bhd v Maybank Trustees Bhd and other appeals* [2014] 3 MLJ 169 (FC)).

OUR DECISION

[21] On the first point in this appeal we are inclined to agree with learned counsel for the defendants. We have scrutinised the statement of claim and are satisfied that it is not the plaintiff's case that special circumstances exist to indicate that the second defendant is a mere façade or front for the first defendant. Nor was a case of actual or equitable fraud raised on the pleadings. Accordingly, it is of no avail to the plaintiff to argue that this is a case for piercing the corporate veil. There is no evidential basis on the record to support that plea: *Law Kam Loy and Anor v Boltex Sdn Bhd and others* [2005] MLJU 225; [2005] 3 CLJ 355 (CA).

[22] In relying on *Lembaga Wang Simpanan Pekerja v Adorna RMIT Sdn Bhd & Ors* [2003] 4 MLJ 729, the learned judge overlooked the fact that the case concerned s 2 of the Employees Provident Fund Act 1991 ('the EPF Act') and s 123(4) of the Companies Act 1965. The duty and liability of a director to pay EPF under s 2 of the EPF Act is statutory and strict. The two cases cited by learned counsel for the plaintiff are also distinguishable on the facts. In *Sunrise*, the court found that the directors of the subsidiary company were nominees of the holding company and that the holding company wholly owned and was in control of the subsidiary. In *CIMB Bank*, Pesaka obtained finance through the issuance of public Islamic bonds worth RM140m. Instead of depositing the bond funds into Shariah designated accounts to be managed and controlled by Maybank Trustees Bhd, Pesaka used its conventional accounts as the designated accounts and Maybank Trustees Bhd was not made sole signatory to these accounts. Having control over the accounts, Pesaka utilised the monies in the designated accounts for its own purposes and failed to redeem the bonds and repay the bondholders on the maturity date. The court found that the directors of Pesaka had acted dishonestly when they misapplied the proceeds of the trust monies. The court had to intervene by imputing a constructive trust upon the two directors for their role in misapplying the trust monies. With Pesaka having admitted full responsibility to the bondholders via the consent

judgment, the two directors should fully indemnify Maybank Trustees Bhd for the loss.

[23] The second point relates to the plaintiff's failure to prove the facts which he asserts underlies the defendants' liability in respect of the renovation and refurbishment works and conversion. In essence, the point taken by learned counsel for the defendants is that the plaintiff has not satisfied the burden of proof.

[24] It is settled law that the party who desires the court to give judgment as to any legal right or liability bears the burden of proof (s 101(1) of the Evidence Act 1950). The burden of proof is on that party is twofold: (a) the burden of establishing a case; and (b) the burden of introducing evidence. The burden of proof lies on the party throughout the trial. The standard of proof required of the plaintiff is on the balance of probabilities. The evidential burden of proof is only shifted to the other party once that party has discharged its burden of proof. If that party fails to discharge the original burden of proof, then the other party need not adduce any evidence. In this respect it is the plaintiff who must establish his case. If he fails to do so, it will not do for the plaintiffs to say that the defendants have not established their defence (*Selvaduray v Chinniah* [1939] 1 MLJ 253 (CA); s 102 of the Evidence Act 1950). On the effect of the burden of proof not being discharged, Terrell Ag CJ in *Selvaduray v Chinniah,* adopting the position stated by the Court of Appeal in *Abrath v North Eastern Railway Co* [1883] 11 QBD 440 said:

> In such a case as the present the position has been clearly stated in the judgment of Brett MR in *Abrath v North Eastern Railway Co* [1883] 11 QBD 440 at p 452:
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> But then it is contended (I think fallaciously), that if the plaintiff has given prima facie evidence, which, unless it be answered, will entitle him to have the question decided in his favour, the burden of proof is shifted on to the defendant as the decision of the question itself. This contention seems to be the real ground of the decision in the Queen's Bench Division. I cannot assent to this. It seems to me that the propositions ought to be stated thus: the plaintiff may give prima facie evidence which, unless it be answered either by contradictory evidence or by the evidence of additional facts, ought to lead the jury to find the question in his favour: the defendant may give evidence either by contradicting the plaintiff's evidence or by proving other facts: the jury have to consider upon the evidence given upon both sides, whether they are satisfied in favour of the plaintiff with respect to the question which he calls them to answer; if they are, they must find for the plaintiff; but if upon consideration of the facts they come clearly to the opinion that the question ought to be answered against the plaintiff; they must find for the defendant. Then comes this difficulty — suppose that the jury, after considering the evidence, are left in real doubt as to which way they are to answer the question put to them on behalf of the plaintiff: in that case also the burden of proof lies upon the plaintiff, and if the

defendant has been able by the additional facts which he has adduced to bring the minds of the whole jury to a real state of doubt, the plaintiff has failed to satisfy the burden of proof which lies upon him.

Applying the principles laid down by the Court of Appeal in the above case, it is clear that the onus is on the plaintiff to prove his case. After the conclusion of the whole case there must be some preponderance in his favour. It may be true that the plaintiff established a prima facie case, but at the conclusion of the trial the learned judge has found that the position was exactly even, ie that any preponderance in the plaintiff's favour had disappeared. That being the case the plaintiff must necessarily fail, as he has not discharged the onus which is upon him. No doubt the defendant would equally have failed if he had been the claimant and had tried to establish, as a substantive part of his case, the alternative version which he tried to prove in answer to that of the plaintiff. But as he was not the claimant, that consideration is quite immaterial. It is quite sufficient for his purpose if he can satisfy the court that the plaintiff has not established his case and the learned judge has so found.

[25] In this case, the plaintiff sought to establish his case on the basis of (a) cl 5(f) of the tenancy agreement, (b) a list of the renovation and refurbishment works, and (c) the plaintiff's letter dated 14 June 2007. Clause 5(f) is devoid of the necessary details of the renovation and refurbishment works the defendants are supposed to undertake. It merely refers to the tenant's undertaking to carry out '... any and all kind (sic) of alterations as contained in the 'renovation & refurbishment exercise' to the demised premises'. In this connection, even though the plaintiff referred to a list which he said contains the details of the renovation and refurbishment works the plaintiff did not produce the list. The letter dated 14 June 2007 was only written some four months after the handing over. In our view, the said letter is a self-serving document and the allegations contained therein are also vague and unclear. As such, there is no probative value to be attached to the said letter.

[26] The fact that the plaintiff's representatives conducted a two-day inspection of the hotel building after the handing over on 1 April 2007 is not really in dispute. The said representatives also prepared an inventory list which was both typed and handwritten for that purpose. Nowhere in that document is there any complaint about the renovation and refurbishment works. Neither was there any complaint about the unsatisfactory state of the hotel building nor of the alleged missing air-conditioner compressor and other items. In fact, the inspection list gave the defendants a clean bill of health.

[27] We also observe that the fact that the defendants failed to pay the short-paid rental for the seven year period of the tenancy is not pleaded in the statement of claim. Accordingly, there is no cause of action to found a basis for the plaintiff's claim for the short-paid rental of RM6,000 x 84 months amounting to RM504,000.

[28] On the totality of the evidence, we take the view that the plaintiff has not established a prima facie case. Even if it can be said that the plaintiff has made out a prima facie case, the learned judge ought to have found that the position was exactly even, that is, that any preponderance in the plaintiff's favour had disappeared. Accordingly, the plaintiff must necessarily fail, as he has not discharged the onus which is upon him.

[29] Further, suffice for us to say that we are of the view that the learned judge had misdirected herself on the principle of law pertaining to the lifting of the corporate veil and finding the first defendant personally liable under the tenancy agreement. For the foregoing reasons, we are constrained to hold that the learned judge failed to judicially appreciate the evidence so as to render her decision wholly erroneous or so unreasonable that no reasonable tribunal would have come to that conclusion.

[30] In consequence of the above, we set aside the order of the High Court and allowed the appeal with agreed costs of RM50,000 for here and below. Deposit is refunded.

Appeal allowed and order of the High Court set aside with costs of RM50,000.

Reported by Dzulqarnain Ab Fatar